IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 24289 of 1996

Between:

Elluri Sreenivas, S/o. Venkatanarayana Rao,
R/o. Edepalli, Machilipatnam,
Krishna District.

..... PETITIONER

AND

1 The Dist. Collector,
Krishna Chilakalapudi, Machilipatnam,
Krishna District.
2 The Mandal Revenue Officer,
Machilipatnam Mandal, Machilipatnam,
Krishna District.
3 The Revenue Inspector,
Machilipatnam Mandal, Machilipatnam,
Krishna District.

.....RESPONDENTS

The Court made the following :

ORDER:

The case of the petitioner is that though he was assigned Ac.2.55 cents in S.No.35 of Rudravaram village, second respondent through his proceedings in RC.B 981/94 dated 12-08-1996 wrongfully ordered his eviction under Section 6 of the A.P. Land Encroachment Act (for short 'the Act') that too without issuing a show cause notice under Section 7 of the Act and so the said proceedings are liable to be quashed.

2. Though this writ petition is of the year 1996, respondents did not choose to file counter till today.

3. If the land is an assigned land, petitioner cannot be an encroacher for the second respondent to invoke the provisions of the Act for evicting the petitioner. For that reason only the proceedings impugned are liable to be quashed.

4. Even if the petitioner is an encroacher, and is not an assignee of the land in his possession, for the second respondent evicting him by taking recourse to

the provisions of the Act, a show cause notice under Section 7 of the Act has to be issued and after considering the explanation only, notice under Section 6 of the Act can be issued. There is no material on record to show that notice under Section 7 of the Act was issued to the petitioner prior to the issuance of the notice under Section 6 of the Act, impugned in this petition. Since the procedure prescribed by the Act is not followed, the notice impugned in this petition is set aside.

5. If the respondents want to evict the petitioner from the land in his possession, they can do so only by taking recourse to due process of law.

6. The writ petition is accordingly allowed with costs.

C.Y.SOMAYAJULU, J.

31-01-2006

Kvsn